IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1432 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO LTD - Appellant(s)
Versus
VINUBHAI MAVJI & 1 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MR SANDIP C SHAH for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 17/08/2006

ORAL JUDGMENT

1. This appeal under Section 30 of the Workmen's Compensation Act, is directed against the judgement and award dated 01.09.1987 passed by the Commissioner of Workmen's Compensation, Junagadh, in W.C.C. No. 9 of 1984 whereby the Tribunal ordered the original applicant is entitled to get Rs. 33,600/- with interest at 9% from both the original opponents.

2. The case of the original applicant is that original applicant was working in the factory of

original opponent No. 1 as a labour. On 08.10.1983, when lentering work was carried out, at that time, original applicant was helping masioner, about 3.00 to 3.30 he has fallen down and sustained injury on both the hands and both the legs were seriously injured. He was removed to the hospital. Therefore he claimed Rs. 42,000/- by way of compensation. Tribunal after hearing passed the aforesaid order.

3. Learned advocate for the appellant has submitted that learned Commissioner has erred in coming to the conclusion that the injured workman was an employee of the insured and therefore, the appellant-insurance company was liable to satisfy the award.

3.1 He has further submitted that the cement factory was not at all in operation as the factory premises were under construction and therefore, the business of the cement factory was not started and the injured workman was not in its immediate employment. In that view of the matter the appellant-insurance company is not liable to satisfy the award.

5. Heard. I have gone through the award of the tribunal. A result of this exercise I am of the view that the issue is already covered by the decision in the case of **New India Assurance Co. Ltd. V. Harshadbhai Amrutbhai Modhiya, reported in 2006 AIR SCW 2352** Paras 14, 15 and 21 of said order read as under:

> 14. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-a-vis the insurer.
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> 15. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law.
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> 21. For the reasons aforementioned, the impugned judgement cannot be sustained. It

> is set aside accordingly. The appeal is allowed. The appellant is not liable for the interest. However, we make it clear that the employer shall be liable to pay the amount of interest to the claimant. In the facts and circumstances of the case, there shall be no order as to costs."

In view of the above decision, the insurance company can be held liable only for the amount of compensation payable to the original claimant but no liability qua interest and penalty on the compensation.

6. In the premises aforesaid, the appeal is, partly allowed. The amount of compensation shall be paid by the insurance company and there shall not be any liability with regard to penalty and interest. If the amount is already withdrawn by the claimant it shall be open for the insurance company to recover the same from the owner. The award of the authority is modified accordingly. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*